

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

In re:

DANIEL WILLIAM COOK and
YOLANDA T. COOK,

No. 11-04-17704 SA

Debtors.

DANIEL W. COOK, et al.,

Plaintiffs,

vs.

Adv. No. 04-1246 S

EASTERN SAVINGS BANK, FSB, et al.,

Defendants.

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MEMORANDUM OPINION AND ORDER

This matter comes before the Court on the United States Bankruptcy Court Judge's Proposed Findings of Fact and Conclusions of Law on Eastern Savings Bank's Motion to Dismiss Second Amended Complaint and Recommendation to District Court, filed April 6, 2006, [Doc. No. 1]. In accordance with applicable bankruptcy rules, this Court conducts a *de novo* review upon the record of any portion of the bankruptcy judge's findings of fact or conclusions of law to which specific written objection has been made by a party. *See* Fed. R. Bankr. P. 9033(d). In this case, neither party has filed objections to the Proposed Findings of Fact and Conclusions of Law. *See* Fed. R. Bankr. P. 9033(b) (providing that parties have ten days after being served with a copy of the proposed findings of fact and conclusions of law to file written objections). Nonetheless, the Court has reviewed the proposed findings of fact and conclusions of law and finds the legal analysis to be accurate and well-reasoned.

IT IS THEREFORE ORDERED that the United States Bankruptcy Court Judge's Proposed Findings of Fact and Conclusions of Law on Eastern Savings Bank's Motion to Dismiss Second Amended Complaint and Recommendation to District Court, filed April 6, 2006, [Doc. No. 1], are hereby adopted in their entirety. Defendant Eastern Savings Bank's Motion to Dismiss Second Amended Complaint is **GRANTED in part**. Counts 3, 5, 6 and 8 of Plaintiffs' Second Amended Complaint are dismissed pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim.

Dated this 20th day of October, 2006.



MARTHA VAZQUEZ
U. S. DISTRICT COURT JUDGE

Plaintiffs *pro se*

Attorney for Defendant:
William R. Keleher